ARGUMENT

IN THE

CASE OF THE POOR'S RATE

Charged on the COLLEGES of

CHRIST AND EMMANUEL

IN THE

UNIVERSITY OF CAMBRIDGE.

BODLEIANA BIBLIOTHECA

By Sir James Marriott, LL.D

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ADVERTISEMENT to the READER.

IF this *cauſe* had not been dropped by a motion being made by the churchwardens and overſeers to quaſh ſo much of the rate as affected the colleges, and to confirm the reſt, the following argument would have been delivered from the bench; provided that, from any arguments of counſel, there ſhould not have appeared good reaſon to the contrary.

The printing of a law argument, deſigned to have been delivered by a magiſtrate, will not be thought irregular by thoſe of the profeſſion, who will, it is believed, recollect ſeveral arguments in the Books of Reports in this way: particularly the famous argument prepared by lord chief baron *Gilbert*, upon the juriſdiction of the eccleſiaſtical courts: and there are publiſhed, I believe, ſome prepared arguments of the late lord chancellor *Hardwicke*, and of other eminent judges.

The reaſon of printing the following argument, without publiſhing it, is not only to ſave the trouble, and to avoid the miſtakes of frequently copying it; but to communicate the ſame, in a private way, more eaſily to the members of both univerſities, who are intereſted in ſo important a queſtion; affecting ultimately and extenſively all their privileges: as well as the better to receive any freſh lights which may be thrown by able gentlemen of the profeſſion of the law upon the caſe.

It is thought by one, of great authority in it, that the argument, which turns upon the *uncertainty* of ſuch rates, and of the *perſons* rated, is one of the ſtrongeſt, among others, againſt the rate in queſtion.

THE

ARGUMENT.

AN appeal from a poor's rate was made by an inhabitant of the parish of St. *Andrew*'s in *Cambridge*, to the justices of the peace for the town of *Cambridge* at the quarter sessions: and the ground of the appeal was, 'That the colleges of *Em-* 'manuel and *Christ* were *not rated* within the said parish; and 'therefore ought to be rated according to the 43 *Eliz.* Two justices were of opinion that the rate should be quashed: two the contrary; and the third not giving any opinion, the rate remained established.

Since that time the churchwardens and overseers have made a second rate in which they have rated *the masters, some of the fellows, and one fellow-commoner of the said colleges.*

The rate made in the parish of St. *Andrew's, Cambridge*, is in the following manner.

£.		£.	s.	d.
30	Rev. Dr. *Richardson*, Master of *Emman. Coll.*	1	15	0
30	Rev. Dr. *Hugh Thomas*, Master of *Christ Coll.*	1	15	0
6	*Henry Hubbard*, B.D. Fellow of *Emman. Coll.*	0	7	0
6	Rev. Mr. *Farmer*, Fellow of *Emmanuel Coll.*	0	7	0
6	*Samuel Blackhall*, Clerk, Fellow of *Emman. Coll.*	0	7	0
6	*John Askew*, Clerk, Fellow of *Emmannel College*	0	7	0
6	*John Hynde Cotton*, Fellow-Commoner of *Em. Coll.*	0	7	0
6	Rev. Mr. *Emsel*, Fellow of *Emmanuel College*	0	7	0
6	*William Parkey*, Clerk, Fellow of *Christ College*	0	7	0
7	*James Blackley*, under-tenant of the Master of *Emmanuel College* —	0	8	2

Rate made *March* 21, 1768.

Francis Turwell, *John Smith* } Churchwardens.

John Blows, *John Wilkin* } Overseers.

Allowed 22 *March*,

James Gifford, *W. Ewin* } Justices.

From this rate the ſaid maſters and fellows appeal.

A doubt might have ariſen upon the propriety of the Vice-chancellor of the univerſity, and the mayor of the town, and others who are inhabitants of the town giving any determination on a cauſe, which, though *in its preſent* ſhape it *is confined to a particular pariſh, and two particular colleges*, muſt *ultimately* in its effect reach the whole univerſity, and every inhabitant of the town of *Cambridge:* ſuch doubt or delicacy might have ariſen, if the ſtatute of 16 *Geo.* 2. had not avoided it.

By the 16 *Geo.* 2. *c.* 18. 'Juſtices may do all things appertaining to their offices, ſo far as the ſame relates to *the laws* for *the relief, maintenance, and ſettlement of the poor:* for paſſing and puniſhing vagrants: for repairs of the highways, or any other laws concerning parochial taxes, levies, or *rates*, notwithſtanding they are rated or chargeable with the rates within any place affected by ſuch their acts. Provided that juſtices for a county at large ſhall not act in the determination of any appeal to the quarter ſeſſions of ſuch county, from any order, matter or thing relating to any ſuch pariſh, townſhip, or place where ſuch juſtice is ſo charged or chargeable.'

The act had in view the *neceſſity* of giving this juriſdiction to juſtices of the peace for towns corporate, and cities which are *counties* of themſelves.

The appeal from the laſt rate not having been admitted: the churchwardens and overſeers have ſhown a *contempt* for this bench, in making this ſecond rate in defiance of that determination, and for putting parties to a great expence; they are to be condemned in full coſts if this rate is quaſhed. For if the other rate was good, this is bad.

Fomentation of ſuits muſt be checked and puniſhed.

That the caſe is determined, is an objection in *primo limine.*

But to take the whole merits, may be better in giving an opinion in a popular cauſe of ſuch conſequence.

The fact admitted is, that at *no time* ſince the making the ſtatute of the 43 *Eliz.* viz. in a period of 167 years, colleges in the univerſity ſeparately or together have been made liable to any rate for the employment and maintenance of the poor of the adjoining pariſhes.

The

The queſtion therefore in the general iſſue turns upon the operation of that ſtatute *now* upon the colleges.

Now with reſpect to the rule of interpreting the ſtatute law, *uſage* of long time is a *ſilent precedent* which is always admitted in the courts of common law, as the interpreter of all ſtatutes.

In this it agrees with *the civil law.* "*Quid refert an populus* "*ſententiam ſuam declaret rebus an verbis?*" ſays the imperial law. And therefore ſo far as the *uſage* upon the ſtatute goes, and ſo far as it relates to the colleges in the univerſity, they have hitherto been exempt from the poor rates by an *uninterrupted* uſage of no leſs than 167 years.

The common law, in imitation of the civil law, requires the ſame qualities to ſupport a uſage. It muſt have been *long*, *uninterrupted*, and *reaſonable in its origin.*

Now the *preſumption Juris et de Jure* in this caſe *prima facie* on the face of ſo long a uſage muſt be, that the uſage, and conſequently the interpretation, or rather the avoidance of the ſtatute *quoad hoc* is well grounded, that is to ſay, reaſonably grounded; either upon

1*ſt*, The *ſpecial* or *public* nature of the conſtitution of ſuch eleemoſynary and learned foundations, and their rights of incorporations as ſocieties taken *ſeparately* or *conjunctively* with the *whole body* of the univerſity. Or,

2*dly*, That ſomething is or hath been paid by the members of that public *body*, and been accepted by another public body in *contribution* for the maintenance of the poor of the body which has accepted, ſo as to work a kind of *modus* or legal right of exemption from any farther contribution.

The general rights of the univerſity, including thoſe bodies which make a part of it, ſo *far as it relates to a public* purpoſe, undoubtedly ſtand upon great *grounds* of law.

It conſiſts of ſocieties which are in their legal and actual nature *eleemoſynary* foundations of antient time, for the encouragement of good learning, ſound doctrines in morals and religion, and good loyalty; and *for the ſupport of the national government* in all its connections; affecting the minds, and ſequently the conduct of the ſubject.

It is an indiſputable fact, that as theſe ſocieties were originally and before the ſtatute eleemoſynary, ſo they are *at this day* ſtill *poor*, not only in the eye of the law, but in fact.

The fellows and ſcholars, and even maſters of colleges, have only ſuch ſtipends as are in *aid* of their maintenance in the purſuit of their own ſtudies, or in directing the ſtudies of others; and which are very far indeed from being ſufficient for their ſupport in their reſpective characters and ſtations.

Upon the general analogy of law, which has eſtabliſhed that *eccleſia non decimas ſolvit eccleſiæ*, ſo it ſtands that public eleemoſynary inſtitutions ſhall not be rateable to eleemoſynary purpoſes for other poor.

The ſame ſtatute 43 *Eliz. c.* 2. ſect. 14. 15. directs that a proportion of the money to be raiſed by virtue of this act, ſhall be ſent for the relief of hoſpitals in the reſpective counties.

Now the act cited never intended that hoſpitals ſhould be taxed for the relief of other hoſpitals.

As every pariſh is in law a body politic; ſo every college is a political corporation, and the univerſity is more extenſively ſo in its general maſs.

It is diſtinguiſhed more favourably from ſuch other bodies politic as pariſhes, becauſe it is a body politic for great *public uſes.*

The occupiers of colleges in the univerſity, and its officers, are *truſtees* for the public; and ſo far as they have any particular emolument and intereſt themſelves, they are but *ſtipendiaries retained in its ſervice, under fixed regulations.*

It is not material to conſider ſingly, whether by perambulation of bounds, colleges, or parts of them, have been taken into the circuit of any pariſhes or not, and ſo have been ſuffered to be held in *general opinion* and vulgar notion, a part and parcel of any pariſh? or otherwiſe, whether they are in the nature of a vill within the precinct of any pariſh? or whether they are reputed pariſhes of themſelves, having a chapel, chaplains, divine ſervice; or, in the language of the eccleſiaſtical law, having *ſacramenta* and *ſacramentalia* within themſelves? Or, are intirely extraparochial; from their being antient monaſteries, or erected on their foundations?

The fact of double fees paid to the miniſter of the pariſh of St. *Andrew's*, as for ſtrangers buried, and that the two colleges were ancient monaſteries, is admitted.

The above are not material conſiderations, if colleges are exempt in any one view; and that they are exempt, is agreed from the uſage (which is the legal rule of interpreting the ſtatute)

ſtatute) and from the nature of their foundation as eleemoſynary and for great public uſes.

Theſe are the firſt great outlines of the queſtion.

It comes next to be conſidered how the ſtatute ſpecially directs.

The 43 *Eliz. c.* 2. ſect. 11. "Directs a taxation of every "inhabitant, parſon, vicar, and others; and of every occupier "of lands, houſes, tithes impropriate; propriation of tithes, "coalmines, or ſaleable underwoods, in the ſaid pariſh.

So that, in order that any perſons ſhould be liable to this taxation, the qualities jointly requiſite are Habitancy, and Occupation, in the pariſh.

The perſons to be taxed are *ſeparate perſons*, not *aggregate bodies*.

The ground from which the tax is to ariſe are *lands*, *houſes* inhabited, and other things ariſing out of lands or immoveable poſſeſſions.

The rate, in caſe of refuſal or neglect or payment, is to be levied by diſtreſs and ſale of the goods of the party.

There is no doubt but the houſes, lands, and other eſtates of colleges, are liable to the rate ſo far as they are occupied by any leſſees of a college.

And ſo are the occupiers leſſees of hoſpital eſtates. So 2 *Salkeld* 527. is a caſe that makes nothing to the point here. But it does not appear that a college, as an aggregate body, can or ought to be rated for its manſe, occupied by its members. The impoſſibility of levying a rate upon them is an objection not to be got over. According to the act it muſt be laid upon ſeparate perſons, and upon ſeparate rents and appretiaments.

The maſter pays no rent for his lodge. The fellows pay no rent for their apartments. They are ſo little ſeparate perſons in the eye of the law, that they do not even pay ſeparately to the land-tax, but the univerſity pays for the whole together.

That colleges are liable to the land tax does not make them equally liable to the taxation for the poor, under 43 of *Elizabeth*. The land-tax is totally different from the poors tax: there is no analogy between the nature or operation of two diſtinct taxes, laid on different objects, by two different acts

of parliament. The one, the poor's rate is upon the occupier inhabiting; and the other the land-tax is upon the owner. The one depends upon a perſon ſingly and his locality, and ceaſes with the occupancy and inhabitancy: The other follows not the inhabitancy but the property.

But how can a rate be laid upon the maſter for his lodge, for which he pays no rent, and which he occupies in *autre droit* as a truſtee in right of his college, and as a conſtituent part of his corporation? the apartments of himſelf and fellows have no value ſeparate from the whole college, and ſo there is no rent by which the rate can be meaſured and appretiated: and there is no perſon in law who can be ſeparated from the complex of his ſociety *ſingly to be rated.*

Colleges can not let their apartments but to members of their own inſtitution; and ſo they cannot be valued as other tenements are, which are aſſignable.

As in monaſteries, by law, in the ſpirit of the feudal ſyſtem, every member was held to be *Servus Monaſterii*; ſo in colleges at this day, which are but monaſteries reformed, the maſters and fellows are ſtill but public ſervants of their own *politic* and *legal eſſence*, and remain ſo indiviſible in reſpect to college rights. They muſt ſue and be ſued together.

With reſpect to any other bodies politic, it is undoubted that the univerſity, and its colleges, are corporations perfectly independent, and ſo not liable to be involved in any other corporate bodies, or *ſmall bodies* politic, ſuch as pariſhes are, if there is any weight in their charters: or in the common law and uſage of the realm by ſolemn deciſions eſtabliſhed in their favour. *It is contrary to law that one body politic ſhould rate another, and that the inferior ſhould tax the ſuperior.*

Noblemen, fellow-commoners, penſioners, are not *occupiers*, *reſiants*, rateable in the eye of the law, any more than lodgers for a winter at a houſe in *Bath* or *London* are rateable as occupiers. They are not ſuch inhabitants in the pariſh as can acquire this quality; they are inmates, and have no permanent domicility.

Colleges are conſtantly in a flux ſtate as to occupancy; maſters, fellows, ſcholars, are frequently changing apartments; frequently not reſident, even for years.

By the *poor act* all perſons are to be ſeparated, and yet by the

the conſtitution of colleges all perſons are indiviſible as to all dues to or from the ſociety.

Nothing can be argued from the ſcite of colleges, in whole or in part. As one manor often exiſts in the very midſt of another, ſo do pariſhes; which *generally*, from the endowments of lords, have followed the bounds of manors.

It is not *impoſſible* therefore that a college, or a part of it, may exiſt in the midſt of a pariſh or pariſhes, as to the ſcite of their manſion, and yet may have parochial rights within themſelves, may be pariſhes in reputation, or may be exempt as independent bodies politic.

That ſuch independent places may exiſt, at common law, exempt from any adjoining pariſhes, is clear from the proviſo of this very ſtatute, 43 *Eliz.* in the caſe of the iſland of *Foulneſs*, c. 2. ſect. 18.

The words are,

" In regard to the iſland of *Foulneſs*, having a chapel of eaſe " for the inhabitants thereof, yet *the ſaid iſland is no pariſh*, " but the *lands in the* ſame are *ſituated within divers pariſhes*, " the juſtices are authoriſed to appoint inhabitants within the " ſaid iſland to be overſeers from the poor dwelling within " ſaid iſland."

In caſe of eſtabliſhing the rate upon the colleges, a diſtreſs muſt be made; but none can be made *without being liable to replevin* upon the goods of any particular perſon; becauſe the goods are his own, and not the goods of the college. It is to very little purpoſe to diſtrain upon bare walls.

The conſequence follows, That as no body is rateable ſingly, nor liable ſingly to diſtreſs, ſo no rate can be made upon colleges or their members at all. And then the rate is void for *Uncertainty*.

Certainty is requiſite in law.

In the caſe of St. *Luke's* hoſpital, 2 *Burrows*, p. 1057. the court held, *That the occupier* rated muſt *be particularly ſpecified*; and held the caſe of *Brickhill* not to the point, *becauſe the man*, (although not rated nominally, but as the occupier of *Roſcoe's* tenement) *had long acquieſced* and paid the rate.

A maſter of a college, or *cuſtos hoſpitii*, is not more an occupier than the ſteward or houſekeeper of St. *Luke's* hoſpital is an occupier, under the ſtatute: And yet in the latter caſe it was determined againſt the rate.

The

The rate in queſtion need only be looked upon, to ſhow the difficulty the churchwardens were under in making a rate, in reſpect to the colleges without partiality, and with certainty. The two maſters are rated; a part of the fellows only: but one fellow-commoner, and not one penſioner or ſcholar.

The obſervation already made upon the land-tax extends to the window-tax. It is intirely different from the poor-tax, and ſtands upon the deſcriptions in its own particular act of parliament, and circumſtances.

That a corporate body can be only taxed in its corporate capacity to a public tax; and that it is impoſſible to tax its individual members, was the determination of lord *Mansfield*, in the caſe of the Royal Aſſurance Company. 1 *Burrows*, 155.

But if it ſhould be admitted, which we do not admit, that colleges, or the univerſity, are rateable in ſome way or other. It may be inſiſted upon that they are only ſo of their own free will, *ſub modo*, and by compoſition with reciprocality of benefit from the agreement.

This leads to an inquiry into a fact, whether colleges have paid, or do pay any thing in aid of the poor, either as rated, or by compoſition, or by a voluntary contribution? Or do charge their own poor upon the neighbouring pariſhes?

The fact is admitted, that the ſtatute for the poor's rate, 43 *Eliz. made in the* year 1601, *never was put in force*, in reſpect to colleges, *at any period:* And that colleges did voluntarily contribute, both before and after the act, in private charitable aid of the poor: And about the year 1620, — 19 *years* after the ſtatute, when, *the plague being in Cambridge*, ſome pariſhes were extremely burthened with poor, the univerſity raiſed by voluntary contribution from the ſeveral colleges the ſum of 4 *l. per* month till the year 1650; when an agreement was between the Vice-chancellor, Heads of Colleges, and the Mayor and Aldermen, that 120 *l. per annum* ſhould be raiſed by the colleges, and to be paid to the over-burthened pariſhes in the following proportion; in which arrangement no attention was paid to what pariſhes any colleges were ſituated in.

	l.	*s.*	*d.*
To St. *Andrews* — —	36	6	0
Trinity — —	18	0	0
Little St. *Mary* — —	9	12	0
St. *Benedict* — —	3	0	0
St. *Peter's* — — —	15	0	0
St. *Giles* — —	37	16	0
	119	14	0
Charge of collecting and paying	6	14	0
	126	8	0

A regular payment was continued down to 1748, *viz.* for 102 years.

In *October*, 1748, Dr. *Paris*, Vicechancellor, and five more heads at a meeting of themſelves, without entering into any agreement with the corporation of the town, made an alteration: ſo that St. *Andrew's* pariſh, which uſed to receive 37*l.* 16*s.* received but 17*l.* and he made a proportionable diſtribution to 13 pariſhes inſtead of 6.

Dr. *Chapman* the next year paid it only as before to 6 pariſhes. Dr. *Keen*, after him, in his two years, divided it as he pleaſed at diſcretion.

In the intermediate periods of 1620, (when the agreement between the Vicechancellor, and heads on one part, and the Mayor and Corporation on the other was made,) ſeveral overtures paſſed upon both ſides reſpecting the diſtribution and mode of payment, but no agreement appears to have been executed in form: yet the voluntary contribution *in toto* has continued to this day the ſame: one college excepted, which is ſaid to have *ſuſpended* its payment.

It is remarkable that although there are 13 pariſhes in *Cambridge*, yet only 6 had any ſhare at all in this contribution: and that 7 received nothing from the colleges at any given period in the courſe of 128 years: viz. from the firſt eſtabliſhment in 1620 to 1748, the year when Dr. *Paris* firſt altered the mode of diſtribution.

In all that period of 128 years the pariſhes in which the principal Colleges are ſeated received nothing. viz.

St. *Edward's*, containing all *King's College*, *Clarehall*, *Trinity-hall*, and part of *Catharine-hall*; *Bo-*

Botolph, all *Queen's*, part of *Pembroke*, and part of *Catharine-Hall*;

St. *Michael's*, all *Caius*, and part of *Trinity College*;

All Saints, all *Jesus*, *Sidney*, part of *Trinity*, and *Saint John's*.

The pariſh of *Trinity* which did receive, had no colleges in it.

The inference from theſe facts is plain that nothing was paid *de Jure*, or in view of any rate as due from the colleges parochially. And that the pariſhes where the principal colleges are ſituated are ſo benefitted that they want no fixed charitable bounty. On the whole it appears that the colleges for a period of 19 years, viz. from 1601, the date of the ſtatute, were not contributors to the poor; and that a certain voluntary contribution has been for a period of 167 years; in all which time the ſtatute hath not *enured* with relation to colleges; and it would now be contrary to *common law* to extend it.

Acquieſcence and acceptance of long time will work a preſcription: and ſo in the caſe of *Brickhill* cited in *Burrows* in the caſe of St. *Luke's* hoſpital, it was ſaid that acquieſcence in a rate bound a party though he was not ſpecified properly in the rate.

Therefore on the ſame ground, the town of *Cambridge* is bound by it's acquieſcence and acceptance of the compenſation of the univerſity; and ſo long as it is continued will be bound.

The compenſation paid by the colleges of the univerſity to the particular pariſhes meets the argument which is drawn from certain inſtances of the ſervants of ſome maſters of colleges being ſent to be maintained by a pariſh, becauſe if that pariſh has a ſhare of contribution from the colleges, then there is no burthen, there is a reciprocality.

But in a pariſh which *receives no contribution* from the *univerſity*, ſuch ſervant *poſſibly* ought not to be put upon that pariſh: he ſhould be ſent to the place of his laſt legal ſettlement, if he can acquire no ſettlement here.

With reſpect to the ſervants of noblemen, fellow-commoners, and penſioners, not of the foundation, they, like their maſters, being only *loco motive* and inmates *pro tempore*, may gain no ſettlement in the town of *Cambridge*.

Pariſhes may have acquieſced, or juſtices may have allowed ſuch ſettlements in a very few inſtances. But inſtances of this ſort certainly work no general binding precedent of law, nor are the deciſions of the quorum in a borough town concluſive upon the wiſdom of his majeſty's judges. And the queſtion remains open.

With

With reſpect to other college ſervants not domiciled in college, if they, in any inſtance, have been a burthen to a pariſh, it has been on account of their having been occupiers of houſes and inhabitants in a pariſh, and *that, many having paid to rates* themſelves, they *are in their* turn intitled to a maintainance.

Sir *Robert Heath*, chief juſtice in 1633, gave it as *his* opinion, that a nurſe child, or ſcholar at a grammar-ſchool, *or at the univerſity*, or perſons ſent to the common goal, hoſpital, or houſe of correction, are not to be eſteemed as perſons *ſettled there* more than *travellers* in their inns; but their *ſettling is where their parents are ſettled.*

So far are colleges from burthening pariſhes with poor that they do greatly aſſiſt them and leſſen their rates by imploying and maintaining ſeveral poor old men and women, inhabitants of the adjoining pariſhes, who would otherwiſe for want of work be a great burthen to the reſpective pariſhes to which they belong as inhabitants, and many of them decayed *houſe-keepers.* Beſides that the colleges, by the private fortunes of its members being ſpent in the town, and by occaſioning a great reſort of ſtrangers, enable the pariſhes the better to ſupport their own poor, the number of which is at the ſame time diminiſhed.

The laſt point to be conſidered is in what way the orders of the juſtices at the quarter ſeſſions, upon the two rates would operate.

The firſt rate which ſtands, omitting the colleges, and is confirmed, is clear of any objection; becauſe the confirmation of that rate is well ſupported in law; becauſe that rate agrees with antient uſage and time immemorial; ſo *prima facie* could not be quaſhed *without ſpecial cauſe ſhown.*

But the ſecond rate, for the ſame reaſons, ought not to be confirmed; it ſhould be quaſhed, becauſe it hath not been uſual to rate the colleges, and that the ſtatute hath at no time *enured.*

But for this eſpecial reaſon the ſecond rate ſhould be quaſhed, becauſe in confirming the ſecond rate it would be for the juſtices to take upon themſelves in *effect* to determine the parochiality of colleges, and conſequently to judge of the ſeveral antient titles, rights, and immunities of their legal eſſence at common law, of their charters as particular bodies politic, or as making a part of that larger body politic, which involves them in the public and aggregate character of the UNIVERSITY.

Such a deciſion of the juſtices as ſhould confirm the ſecond rate

rate would be in fact annexing colleges to parishes, and the university to the town. But justices have no power to *annex* one body politic *to another*; if they *do*, *their order is void*. And so it was adjudged in several cases. There is a strong case 1 *Croke Charles* p. 286. *Nichols v. Walker* and *Carter*. *Totridge* was found by the jury to be a vill, antiently parcel of the parish of *Hatfield*, and that this vill had never been severed by any solemn act from the parish of *Hatfield*, and that the tythes of *Totridge* were paid to the parson of *Hatfield*, and for threescore years or more, and at the time of making the act of 43 *Eliz.* for relief of the poor, and unto this day the said vill of *Totridge* was commonly reputed a parish by itself, and had its own officers and chaplain, and repaired its own chapel. The action was brought for a trespass against the church wardens of *Hatfield* for a distress upon the goods of the plaintiff, inhabitant of *Totridge*, *taken* by warrant of three justices. Verdict for the plaintiff.

And on a motion to justify the officers, because they did it by the authority of three justices, it was overuled; "for the "rate being *unduly* taxed, it is not like a warrant from one "of the King's courts, who have a general jurisdiction." But here the "justices of the peace have but a particular jurisdic- "tion, viz. to make warrants, to levy rates *well* assest." Adjudged for the plaintiff.

And so lord *Mansfield* said, in the case of St. *Luke's* hospital, that "in an assessment of a rate there may be not only a defect "in form but in the *essence* of the thing: for unless some "particular person be fixed upon who may *properly* be rated as "occupiers of the building, no rate at all can be made upon it."

In cases of reputed parishes, or vills extraparochial, or exempts, the justices cannot send persons to them from another parish, nor *vice versa*.

So it was determined in the case of the inhabitants of the forest of *Dean*, and the parish of *Linton*. 2 *Salkeld*. 487.

It was said, places exempt from receiving shall not have the benefit of removing.

These are the words of that great man lord chief justice *Holt*. "Persons in extraparochial places must subsist on private "charity, *as all persons did at common law, before the* 43 *Eliz.* "The 43 *Eliz. does not extend to extraparochial places.*"

Where extraparochial places contain *more houses* than one,

so

ſo as to come under the denomination of a vill or a townſhip, there the juſtices may exerciſe all the powers of the 43 *Eliz.* So held lord chief juſtice *Parker*. Caſe of *Stokelam* and *Dolting*. B. R. *Hill.* 11 *Anne.*

So that when there is one houſe or manſe extraparochial, the inference is clear, that the juſtices cannot do any thing under the ſtatute.

In the caſe of *Rudd v. Morton.* 2 *Salkeld* 501. the court ſaid, to make a reputed pariſh within the 43 *Eliz.* it muſt have at chapel, wardens, and ſacraments at the *time the ſtatute was made.* In the caſe of *Bridewel* precinct, and pariſh of *Clerkenwell*, vide 2 *Salkeld.* p. 486. *per Holt.* chief juſtice:

" If a place is extraparochial, and has not the face of a pa-
" riſh, the juſtices have no authority to ſend any man to be
" maintained by them."

With reſpect to *taxing* in *aid*, that part of the ſtatute is obſolete.

It is a caſe that cannot exiſt; and it has at no time been executed; firſt becauſe no pariſh is intirely unable to maintain its own poor. Secondly it would produce a *circuity* of *taxation* through the whole kingdom, and conſequently confuſion, for all would tax their neighbours. Thirdly, It depends upon the judgement and diſcretion of the juſtices. The words of the 43 *Eliz.* 9. 3. are, " if the juſtices do *perceive* that the inhabitants
" of any pariſh are not able."

To conclude: If therefore the juſtices ſhould confirm the ſecond rate, it would be inconſiſtent with their former deciſion; they would take upon themſelves indirectly to overturn the moſt antient uſages, to fix the parochiality of colleges, to limit the extent of privileges and charters, and to annex and mingle together diſtinct bodies politic: And therefore as they have rightly confirmed the former rate, ſo they are under a *neceſſity* of ſetting aſide the ſecond rate upon the ſame bottom: becauſe it is contrary to the *uſage*, the ſtatute having at no time *enured*: becauſe there is a voluntary contribution paid, and accepted; becauſe the rate is defective in *eſſence*, the perſons rated not being proper objects: nor the rate capable of being appretiated and levied with certainty: becauſe the colleges and the univerſity, in their original conſtitution, and political eſſence, for ſome one, or all of theſe reaſons, were, and are EXEMPT.

FINIS.